IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5067 OF 1991

Natwarlal Dwarkadas Devi ..Petitioner

V/s.

Pune Muncipal Corporation ..Respondent

Mr.V.S.Gokhale, advocate for petitioner

Mr.R.M.Palte, advocate for respondent

Coram : D.G.Deshpande,J.

Date : 16th October, 2006

P.C.

1. Heard advocate for the petitioner and respondent – P.M.C. The petitioner has filed this petition challenging an order of the District Judge, Pune in appeal under Section 411 of the Bombay Provincial Municipal Corporation Act, 1949. That was the second appeal by the petitioner. The appeal was allowed. The order of the first Appellate Court was set aside. The order of the first Appellate Court was dated 19th January, 1988 and assessment made by respondent, Pune Muncipal Corporation dated 8th September, 1982 or 9th

September, 1982 was set aside. Prior rateable value of the plot @ Rs.490/- p.a. is maintained and confirmed. The counsel for the petitioner states that what was challenged in the first Muncipal Appeal was demand of the plot @ Rs.1000/- p.a. Earlier rateable value is Rs.490/- and the first Appellate Court maintained that order but that order was set aside in the second Appeal. Meaning thereby that the demand of the Pune Municipal Corporation of Rs.1000/- p.a. was up held.

2. It is a specific case of the petitioner from the beginning before going authority below that he is owner of the plot. No doubt structure thereon is not constructed by him but it is an encroachment and the encroacher has made construction. He has been also asserting right from the beginning that he has filed a Special Civil Suit against encroacher for removal of encroachment i.e.712 of 1988 in the Court of Civil Judge, Senior Division, Pune for injunction against the encroacher i.e.M/s.D.Sarabai and Company to vacate the suit plot by removing unauthorized construction.

3. This suit is filed in the year 1988 and it is still pending but the fact remains that plaintiff is not at all claiming to be owner of the construction. However, while dismissing appeal of the petitioner, the Second Appellate Court i.e.the District Judge, in para 10 which was readover to me by the advocate for the petitioner is as under :-
“It is not possible that he should allow a third person to enter in this plot and construct the shed. Admittedly, plot in question is situated in the heart of Pune city. So it means that shed in question should be constructed without knowledge of the present petitioner.” These observations are totally wrong and perverse. Thousands of encroachments are going on in big cities without any knowledge to the true owner of the property.

4. The question is so far as tax on plot is concerned, the petitioner is not denying his liability but when he clearly and specifically stated that he is not owner of the structure and that he has filed Civil Suit for removing of encroachment i.e.construction against the said person then two options are open before Pune

Municipal Corporation either proceed against the said encroacher or does not make any demand of tax regarding structure from the petitioner but these main aspects were not considered by the District Judge in the Civil Appeal. No reasoning have been given by the District Judge on what basis the petitioner is liable to make payment of tax regarding structure. In any case the reasonings given are totally wrong and therefore, this petition is required to be allowed. Hence, petition is allowed. Rule is made absolute in terms of prayer Clause (a).

(D.G.Deshpande,J.)